

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

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In re Patent Application of:

Allon G. Engلمان

Confirmation No. 2996

Application No. 10/077,667

Art Unit: 3716

Filed: February 15, 2002

Examiner: Ryan Hsu

For: Gaming Machine With Block Wagering

Customer No. 70243

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Mail Stop Appeal Brief – Patents (via EFS-Web)

Commissioner for Patents

Alexandria, Virginia 22313-1450

**APPELLANT'S COMMUNICATION REGARDING THE  
THIRD EXAMINER'S ANSWER DATED JANUARY 31, 2011**

Dear Commissioner:

This communication is responsive to the Third Examiner's Answer mailed on January 31, 2011. The First Examiner's Answer was mailed on August 6, 2009 and the Second Examiner's Answer was mailed on October 5, 2009.

A new ground of rejection under 35 U.S.C. §112 has been made against dependent claim 37 in the Third Examiner's Answer mailed on January 31, 2011. It is noted, however, that claims 38-39 are dependent on claim 37, which would suggest that claims 38-39 could also be rejected under 35 U.S.C. §112. But, the Third Examiner's Answer does not indicate any §112 rejections for claims 38-39.

This appeal process has taken quite some time. The Appellant does not agree with the merits of the new rejection under 35 U.S.C. §112. But to continue to provide arguments on these points will only delay the appeal process further, without making any advancement on the real

dispute, *i.e.*, whether the pending claims are obviousness in light of the prior art. Accordingly, because the new rejection only concerns dependent claims, Appellant will choose to not proceed under (i) 37 CFR § 41.39(b)(1) (*i.e.*, reopen prosecution) or (ii) 37 CFR § 41.39(b)(2) (*i.e.*, maintain appeal with new arguments addressing the new grounds of rejection).

Accordingly, to expedite the appeal process, Appellant is acquiescing to the Board's *sua sponte* dismissal of the appeal of dependent claim 37 that is the subject of the new ground of rejection under 35 U.S.C. §112. See 37 CFR § 41.39(b). Furthermore, although the Third Examiner's Answer does not mention claims 38-39, because these two claims are dependent on claim 37, claims 38-39 would also be seemingly subject to the new §112 rejection. Rather than further paperwork on that point, Appellant is also acquiescing to the Board's *sua sponte* dismissal of the appeal of claims 38-39 that would also appear to be subject to the new ground of rejection under 35 U.S.C. §112. In summary, Appellant is moving forward with the appeal on only claims 1-7, 9-15, 17, 18, 25-31, 33, 35, and 41-52.

It is believed that no fees are presently due. However, should any fees be required, the Commissioner is authorized to deduct the fees (except for payment of the issue fee) from Nixon Peabody LLP Deposit Account No. 50-4181, Order No. 247079-000127USPT.

Respectfully submitted,

Date: March 31, 2011

By: /Daniel J. Burnham – Reg. No. 39,618/  
Daniel J. Burnham

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